

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN THE MATTER OF:) Bankruptcy No. 08-14631
)
)
)
)
SHAPES/ARCH HOLDINGS, LLC,)
et al,) Camden, New Jersey
) May 1, 2008
Debtors.) 3:43 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE GLORIA M. BURK
UNITED STATES BANKRUPTCY JUDGE

U.S. BANKRUPTCY COURT
FILED
CAMDEN, NJ

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BY DEPUTY CLERK

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1 (The following was heard in open court at 3:43 p.m.)

2 THE COURT: Be seated.

3 MR. FELGER: Good afternoon, Your Honor. Mark
4 Felger of Cozen O'Connor on behalf of the debtors.

5 THE COURT: Good afternoon. I do have one person on
6 the phone. Mr. Callahan?

7 MR. CALLAHAN: Yes.

8 THE COURT: This is Judge Burns and you're on in the
9 courtroom in the matter of Shapes/Arch Holdings. Would you
10 put your appearance on the record, please.

11 MR. CALLAHAN: Yes, ma'am. My name is William E.
12 Callahan, Jr. I am counsel for DeLage Landen Financial
13 Services, Inc.

14 THE COURT: All right. Please let me know if you
15 have any difficulty in hearing anybody and I will try to get
16 them closer to a microphone.

17 MR. CALLAHAN: Thank you.

18 THE COURT: Mr. Felger.

19 MR. FELGER: Would you like appearances, Your Honor,
20 or --

21 THE COURT: Yes, please, let's start with that.

22 MR. POSLUSNY: Good afternoon, Your Honor. Jerrold
23 Poslusny, Cozen O'Connor, on behalf of the debtors.

24 MR. HALPERIN: Alan Halperin, Halperin, Battaglia
25 Raicht on behalf of the Committee.

1 MR. SIROTA: Good afternoon, Judge. Michael Sirota,
2 Warren Usatine, Cole, Schotz, on behalf of the Committee.

3 MR. HAUSMAN: Good afternoon, Your Honor. Mitchell
4 Hausman for the Office of the United States Trustee.

5 THE COURT: Good afternoon.

6 MS. VUOCOLO: Good afternoon, Your Honor. Diane
7 Vuocolo and Alan Brody of Greenberg Traurig for Arch
8 Acquisition I. I would also like to introduce two of my
9 partners in the courtroom today, Your Honor. Ms. Mitchell,
10 who's lead bankruptcy counsel in this matter. Her admission
11 has been already approved for pro hac.

12 THE COURT: Good afternoon.

13 MS. VUOCOLO: And Mr. Davis is trial counsel for
14 Arch Acquisition and his application is pending. Objections
15 were past yesterday, and there were no objections, so an order
16 will be submitted.

17 THE COURT: Good afternoon.

18 MR. DAVIS: Thank you, Your Honor.

19 MR. BUECHLER: Good afternoon, Your Honor. Bruce
20 Buechler from Lowenstein Sandler on behalf of Sun Capital
21 Partners.

22 THE COURT: Good afternoon.

23 MR. PATTERSON: Good afternoon, Your Honor. Paul
24 Patterson, Stradley, Ronon, Stevens and Young, on behalf of
25 CIT Group Revolving Credit Lenders, JPMorgan and Textron

1 Financial. Also here with me today is my partner, Michael
2 Cordone who I believe the Court has admitted pro hac vice, as
3 well as my partner, Gary Scharmett.

4 THE COURT: Good afternoon.

5 MR. SHAPIRO: Good afternoon, Your Honor. Joel
6 Shapiro, Earl Forte and John Lucian on behalf of Arcus
7 entities, and I apologize -- we've run out of chairs. I'm not
8 judging any -- I'm not judging anybody today, Your Honor.
9 That's your job. Thank you.

10 MR. MORTON: John Morton for Wells Fargo Equipment
11 Finance and Jaguar Credit.

12 MR. SEIDEN: Good afternoon, Your Honor. Stuart
13 Seiden from Parker McCay for Pennsauken Township.

14 THE COURT: Good afternoon.

15 MR. GAREMORE: Good afternoon, Your Honor. Joseph
16 Garemore from the Brown and Connery firm on behalf of the
17 Pollution Control Financing Authority of Camden County.

18 MS. SHUFF: Deborah Shuff, Drinker Biddle and Reath
19 on behalf of Sears, Georgia-Pacific, the Glidden Company,
20 Avery Dennison, Borden Foods, Crowley Corporation, Garrett-
21 Buchanan and Septa.

22 MS. POLLACK: Good afternoon, Your Honor. Robyn
23 Pollack, Saul Ewing, on behalf of SL Industries, Inc.

24 THE COURT: Mr. Felger.

25 MR. FELGER: Yes, good afternoon, Your Honor.

1 First of all, I'd like to thank Your Honor for
2 indulging us for the entire day while a lot of parties, a lot
3 of counsel tried to work through a great number of issues,
4 very complicated issues and very serious issues. We -- we
5 stand here at almost 4:00 this afternoon without a clear
6 direction on how to proceed with the -- with the agenda that's
7 before Your Honor.

8 We appeared this morning, believing that we were
9 likely to go forward with our agenda. And over the course of
10 the evening and early morning hours, HIG was able to -- or
11 appeared to be able to bridge certain concerns that the
12 debtors had with respect to their competing offer -- competing
13 plan. I think we may have raised those issues before Your
14 Honor at the last hearing. Certainly -- well, I'm not sure
15 whether they were -- they were adequately vetted in the papers
16 that have been filed.

17 But the concerns that the debtor had were whether
18 HIG would be able to do the entire DIP that they proposed, the
19 term DIP and the revolver DIP, and if not, whether CIT would
20 remain in the facility through a plan process. That was a
21 principal concern of ours.

22 Another principal concern we had was -- beared upon
23 certain defaults, certain covenants that were in the DIP, term
24 DIP agreement. The debtors throughout the case have defaulted
25 under certain covenants and our term lender, Arcus, has waived

1 those defaults. So we were concerned about bringing a new
2 lender in with those covenants in place with the possibility
3 of additional defaults going forward.

4 A third principal concern was whether HIG had a
5 commitment to do the exit financing and equity commitment
6 proposed under their plan. And the parties worked literally
7 all night, and what was presented to us at some point this
8 morning, I'm not quite sure when, but it was a package that
9 seemed to ameliorate those concerns for the debtor. And what
10 we believed we had at that point was a competitive plan that
11 was better than what we had presented and what we were
12 prepared to go forward with today in terms of approving a
13 disclosure statement.

14 Of course, the devil's always in the details, Your
15 Honor, and when we started to work through the issues of
16 transitioning to a process that would install HIG as the term
17 DIP lender and move forward an HIG sponsored plan, numerous
18 issues arose. And throughout the day, we had fits and starts
19 where we thought we had a deal in place, but any time we
20 seemed to be dangerously close, new issues arose.

21 And, unfortunately, where we are at 4:00 this
22 afternoon is that we haven't been able to close the gap on all
23 of the issues that have been presented by the numerous parties
24 that have been involved in the negotiations throughout the
25 day. And it's our view that this process could be facilitated

1 if Your Honor would entertain a chambers conference among the
2 principal negotiating parties, the principal interested
3 parties in this matter so that we can frame concerns and --
4 and hopefully obtain some guidance from Your Honor on how to
5 perhaps get to a point where the parties can proceed in an
6 amicable way to keep this business alive beyond -- beyond
7 today.

8 I haven't had a chance to vet that with the
9 principal constituents, but it's the debtors' strong desire to
10 have a chambers conference with Your Honor.

11 THE COURT: Well, let me see what everybody else has
12 to say. Mr. Sirota, do you think that would be valuable?

13 MR. SIROTA: Judge, I think it might be valuable,
14 but I think the record should be more fully developed so Your
15 Honor and the parties that have been participating have a
16 little better visibility as to what's gone on in these last
17 several days and these last several hours.

18 It's not terribly complimentary to the debtor or the
19 process, but I think it's important for the Court to know. If
20 the Court should elect thereafter that a chambers conference
21 is necessary or suitable, certainly the Committee has no
22 objection to it.

23 THE COURT: Mr. Hausman, any -- any position on the
24 U.S. Trustee's perspective?

25 MR. HAUSMAN: Your Honor, I think there should be a

1 little bit more on the record of what's come down and what the
2 issues are before we go into a chambers conference.

3 THE COURT: Mr. Shapiro?

4 MR. SHAPIRO: A lot of people are going to say
5 things on the record that you can't take away, and if we're
6 going to do something and try and do it and come up with a
7 salvageable process that works, I just don't agree that laying
8 everything out on the record is necessarily the way to get
9 there. If we wind up there, that's fine, but we're going to
10 want to have bidders, you're going to want to have a process,
11 and putting it all on the record now I just don't think helps
12 that end for now.

13 THE COURT: Ms. Vuocolo, Mr. Brody, whoever wants to
14 be heard? Ms. Mitchell?

15 MS. MITCHELL: Your Honor, we're happy to
16 participate in a chambers conference. I think that might be
17 helpful.

18 THE COURT: Okay. Anybody else? Yes. Mr.
19 Patterson.

20 MR. PATTERSON: Your Honor, I would agree that a --
21 that a conference I think would be very helpful. And,
22 respectfully, I do concur with Mr. Shapiro. I think if the
23 time comes when it's necessary for matters to be put on the
24 record, that can happen. But I say let's -- let's take a shot
25 at talking about it.

1 THE COURT: Yes, I -- I don't disagree, Mr. Sirota,
2 that probably that may be where we end up coming, putting
3 everything on the record, but at Mr. Felger's request, I'm
4 willing to hear what the parties have to say and see if maybe
5 we can just get some guidance as to how we're going to proceed
6 with it and then whatever comes on the record comes on the
7 record.

8 But I think it's probably -- Mr. Shapiro's probably
9 -- has a point there that maybe it's a good idea just to have
10 an amicable discussion and see where we go at that point.

11 Mr. Callahan, unfortunately, I don't know that I can
12 have you on in the chambers, but we'll be happy to let you
13 know as soon as we finish if we're going to go back on the
14 record, so you can participate by telephone again.

15 MR. CALLAHAN: That'll be fine. My issue is a -- my
16 client's issue is a very narrow one, and I think -- I get the
17 sense from listening to other counsel in the courtroom that
18 they're dealing with much broader and more substantial issues,
19 though. I'm not happy to not be involved in the chambers
20 conference.

21 THE COURT: Mr. Callahan, what we'll do is I'll have
22 one of the -- one of the counsel -- yes, Mr. Poslusny?

23 MR. POSLUSNY: If I can get Mr. Callahan's number
24 where we can contact him, we may be able to work out his
25 issues separately, Your Honor.

1 MR. CALLAHAN: And that's certainly fine. I do
2 think it's a relatively simple issue that can be worked out.

3 THE COURT: Well, I was going to suggest that once
4 we finished, one of the attorneys would get in touch with you
5 and see whether you need to be part of whatever goes on
6 afterwards or not. Are you in your office, Mr. Callahan?

7 MR. CALLAHAN: I am.

8 THE COURT: Do you have any problem with putting
9 that on the record, the number?

10 MR. CALLAHAN: No, not at all. My direct dial is
11 540-777-3068.

12 THE COURT: All right. Thank you. I'm going to
13 disconnect now, and Mr. Poslusny will get back to you and you
14 can decide whether you want to be part of anything else if we
15 have further hearings on the record. Thank you.

16 MR. CALLAHAN: Okay. Thank you very much.

17 THE COURT: Okay. Just give me a few minutes to get
18 some chairs together and then come down to the second floor.
19 We'll see where we go from there.

20 MR. FELGER: Thank you, Your Honor.

21 (Recess, 3:56 p.m. to 5:50 p.m.)

22 MR. FELGER: I apologize, Your Honor. I'm just a
23 little concerned because we don't have any lawyers from -- for
24 CIT here.

25 THE COURT: Okay. Did anybody get in touch with Mr.

1 Callahan?

2 MR. FELGER: Mr. Poslusny may have, but I don't see
3 him either.

4 THE COURT: Well, it's 6:00, I don't know if he's
5 there. So I think we said we would have somebody just get in
6 touch with him about the -- these issues.

7 MR. FELGER: I believe he had a purchase money
8 security interest issue in terms of whether we were trying to
9 prime his interest and I imagine we will -- we will resolve
10 his issue in the same manner we resolved -- I believe we've
11 resolved Wells Fargo's issue.

12 THE COURT: If Mr. Callahan has a problem and needs
13 something to be discussed, we could always have a telephone
14 conference or something.

15 MR. FELGER: We will -- we will certainly speak with
16 him and resolve his issue before we present any order to Your
17 Honor. I see my colleague, Mr. Poslusny.

18 THE COURT: Mr. Poslusny, did you talk to Mr.
19 Callahan?

20 MR. POSLUSNY: I did speak to Mr. Callahan, Your
21 Honor. I understood he was going to be dialing back in, but
22 his -- his client, DeLage, is a PSMI, a secured party. We
23 told him that, similar to Wells Fargo, to the extent that he's
24 properly perfected and has an unavoidable lien, et cetera, et
25 cetera, et cetera, we're not looking to prime him.

1 And I believe HIG will agree with that, and CIT I
2 think will agree with that, because I think that's what's
3 already in the DIP loan orders as well as the DIP loan
4 agreements.

5 THE COURT: Well, did he want to be part of this --

6 MR. POSLUSNY: I thought he was going to call in,
7 Your Honor, but I told him that I would place it on the
8 record, and if he hasn't called in, I don't know what happened
9 to him.

10 THE COURT: Mr. Felger, are there still issues
11 outstanding?

12 MR. FELGER: I don't believe there are issues
13 outstanding. I think, with Your Honor's assistance, and we
14 all greatly appreciate Your Honor taking the time and
15 indulging us in chambers, because I think it -- it was
16 valuable, and I believe we're here now with an agreement among
17 the parties, although I'm just a little concerned that I don't
18 have CIT's counsel or Versa/Arcus' counsel in the courtroom.

19 MS. MITCHELL: If I could, Your Honor --

20 THE COURT: Yes.

21 MS. MITCHELL: -- Nancy Mitchell on behalf of Arcus.
22 They are actually in the conference room "finishing up" and
23 they will be right in.

24 THE COURT: So they want us to go ahead?

25 MS. MITCHELL: I put that all in quotes because

1 we've heard that before. Let's -- I would think maybe you
2 could go through what you and the Committee had agreed to,
3 Mark, and then go from there.

4 MR. FELGER: Okay.

5 MR. SIROTA: I think that -- I'm going to see if I
6 can convince them to come in.

7 MR. FELGER: Yes.

8 THE COURT: All right. Well, why don't I take a
9 five-minute break and try to get everybody in here. Why don't
10 we do that? Okay.

11 MR. FELGER: That would be best. Thank you, Your
12 Honor.

13 MR. SIROTA: Thank you, Judge.

14 (Recess, 5:54 p.m. to 6:00 p.m.)

15 THE COURT: Please be seated. Okay. Let's try this
16 again.

17 MR. SHAPIRO: Sorry, Your Honor. We were
18 endeavoring in a result of chambers to try and --

19 THE COURT: I appreciate that. Mr. Felger, are we
20 ready to go?

21 MR. FELGER: Yes, we are ready to go. Good
22 afternoon again, Your Honor. Mark Felger of Cozen O'Connor
23 for the debtors for the record. I'm going to try to walk
24 through where we are, what we've achieved and what we -- what
25 we intend to do over the next 24 hours and several days.

1 We're here on two motions, the motion to approve the
2 disclosure statement which we are not going forward with today
3 and a motion to approve the DIP financing motion. Under that
4 motion, we have two DIP financing facilities, a revolver
5 facility through CIT and presently a term facility through
6 Arcus.

7 Pursuant to the settlement discussions today, what
8 we intend to do going forward is we intend to replace Arcus
9 with HIG -- I mean, I'm sorry -- with HIG in the term
10 facility. And how we will do -- how we will do that is that
11 we will -- we intend to submit a final order approving the
12 Arcus term financing, hopefully tomorrow, and the loan, the
13 Arcus loan, will be assigned pursuant to an assignment
14 agreement from Arcus to HIG.

15 In addition, tomorrow we will submit a final order
16 approving the CIT revolver facility. The HIG facility will
17 involve an amendment to the Arcus DIP agreement that contains
18 a number of improvements from the Arcus facility. And some of
19 those material changes will be a reduction of interest from
20 the applicable margin, a reduction from six percent to four
21 percent.

22 The collateral, in terms of the collateral, the HIG
23 agreement will exclude avoidance actions. The commitment fee
24 which is the unused line fee, will be reduced from two percent
25 to one and a half percent. There's an EBITDA covenant that

1 will be eliminated. There's a limitation on reimbursement of
2 out-of-pocket expenses to those incurred after the entry of
3 the final order.

4 The facility will be increased from 25 million to 30
5 million. The termination fee of two percent will be
6 eliminated. There's a material adverse change clause which
7 will be eliminated. There's a budget variance covenant which
8 will be loosened to allow a variance of 15 percent as opposed
9 to five percent, and there will also be an elimination,
10 consideration of certain line items.

11 The agent facility fee of 40,000 a month and the
12 non-refundable collateral monitoring fee of 40,000 a month
13 will be eliminated under the -- under the amended term DIP
14 agreement.

15 There are a number of other changes as well, but
16 I've -- I believe I've hit -- hit on most of the high points.
17 Someone will correct me if I'm wrong. So those are the
18 material changes to the -- to the term facility once we effect
19 the assignment of that -- of that loan from Arcus to HIG.

20 The game plan going forward, Your Honor, is to
21 submit, as I indicated, submit the two orders to Your Honor
22 tomorrow. We will proceed to file a new plan which will
23 install HIG as the plan funder. We expect to do that early
24 next week.

25 The plan will provide -- it will be essentially the

1 Arcus plan with several improvements, the most material of
2 which is an improvement in the treatment of the class five
3 holders of general unsecured claims and the -- the HIG
4 sponsored plan provides for a \$5 million fund to be paid to
5 holders of allowed general unsecured claims.

6 The plan will also provide for a competitive
7 process. That competitive process will be negotiated among
8 the parties including a sales consultant that the debtors have
9 agreed to retain promptly. Our hope is to get a sales
10 consultant on board over the next two to three business days
11 and that the -- the proposed process with the -- with the
12 sales consultant and reach an agreement among the major
13 parties on what that process ought to look like and move
14 forward with a motion to approve that process on notice to
15 interested parties.

16 The order that we intend to submit tomorrow, it is
17 intended that we will attach a draft of a plan that will be in
18 substantially final form.

19 In connection with the placement of Arcus with HIG
20 in the -- in the term facility, that agreement was reached
21 among the parties. And the material terms of that agreement,
22 and the parties will correct me if I miss something, is that
23 \$600,000 will be paid to Arcus as a termination fee; \$750,000
24 will be paid to Arcus for their legal fees subject to review
25 for reasonableness; a \$50,000 fee will be paid to Arcus in

1 connection with the assignment of the loan to HIG.

2 There will be an exchange of mutual releases. Arcus
3 has agreed to cooperate in the transition of the loan and the
4 plan position to HIG, and Arcus will be resigning as the
5 manager of the debtors. I believe I've covered the material
6 terms of that agreement, but folks will correct me and
7 embellish, if necessary.

8 MR. SHAPIRO: Your Honor, I don't mean to interrupt
9 Mr. Felger, but I will on that last point --

10 MR. FELGER: Okay.

11 MR. SHAPIRO: -- where we're going to resign as
12 manager. I've been told by the corporate types that's subject
13 to adjustment because I don't know that the current agreement
14 allows for our resignation. It may require an assignment of
15 it somewhere or a termination of the first amendment, whatever
16 it is -- the concept is, that at the end of the day, as the
17 manager, we will be gone, I just don't know that it can be
18 accomplished that way.

19 MR. FELGER: Right. I might have gotten ahead of
20 myself. I've had discussions on my end. Mr. Shapiro's had
21 discussions on his end. We haven't talked about that as yet,
22 but we will.

23 THE COURT: The result will be the -- the removal in
24 some way of Arcus in their management position, but you'll, I
25 guess, put together as part of the order that you submit, the

1 way that you're going to take --

2 MR. SHAPIRO: How we're going to resolve that.

3 MR. FELGER: Correct. Correct, Your Honor. And I
4 guess what I ought to do at this point is cede the podium to
5 folks who would wish to be heard. I think that covers sort of
6 the high points. The one thing we will want to do is -- is
7 have HIG represent on the record that they intend to fund
8 subject to the entry of the order tomorrow and that they have
9 the commitments in place to fund the plan that's been
10 negotiated and is in substantially final form at this point.

11 THE COURT: All right. Well, let's -- why don't we
12 start with having everybody say what they want to, and then,
13 Mr. Felger, I'll give you an opportunity to call your witness.

14 MR. SIROTA: Judge, if the Court please, Michael
15 Sirota, Cole Schotz, co-counsel to the Committee. I'd also
16 like to thank the Court for the time in chambers. I'm glad I
17 thought of the idea and recommended it to the Court.

18 With respect to Mr. Felger's comments on the
19 settlement, I'd like to add or clarify a few things. First,
20 all of the settlement terms will be imbedded in this final
21 order. All of us, of course, reserve our respective rights to
22 make sure it embodies all of the terms of settlement.

23 Secondarily, the Committee, as well as HIG, have
24 already agreed to a sales process. It's in the plan of
25 reorganization. The understanding is that the sales

1 consultant will get to weigh in on that and give us his or her
2 advice, understanding that we're not going to hold up the
3 process in moving it along dependent upon the retention of the
4 sales consultant and the time that he or she may need.

5 With respect to the Arcus fee of \$50,000 for the
6 assignment, that's an obligation directly of HIG. It does not
7 come from the estate. All of the consideration being given to
8 Arcus is conditioned upon their cooperation, that they will
9 facilitate both the financing of this enterprise until the
10 assignment is effectuated to HIG as well as cooperate with HIG
11 in the assignment of their position.

12 With respect to the sales consultant, the Committee,
13 of course, must agree to the person selected together with the
14 debtor. And we also have to work out how we're going to
15 handle some interim due diligence so that we can get people
16 involved in the process while we're moving some paperwork
17 around.

18 I believe those are the only clarifications I have,
19 although, I'm not sure how we ended up with the CIT/Versa part
20 of the equation.

21 THE COURT: Mr. Patterson.

22 MR. SIROTA: Oh, I'm sorry, Judge. The other part
23 of it is that with respect to -- as part of the component of
24 the settlement with Versa, HIG has agreed to fund \$300,000 of
25 additional money. That will be built into their overbid

1 protection as part of the sale process.

2 THE COURT: Mr. Patterson, are you ready to address
3 it or are you still waiting for --

4 MR. PATTERSON: Well, I'm ready -- if your question
5 is can I address it with finality at the moment, Your Honor, I
6 cannot. I can inform the Court as to where we are at the
7 moment, if you would like that, or if you just want us to --

8 THE COURT: Well, I just noticed that Mr. Shapiro
9 just stepped out, so I thought maybe we should await his
10 return.

11 MR. PATTERSON: He did. His partner is here. But
12 the long and the short of it is, a few developments happened
13 literally within the last five minutes that have called into
14 question a couple of items that at least we felt were settled
15 based on our discussions with folks. I hope those can get
16 resolved in a way we can report a resolution to you, but if
17 not, we'll tell you what they are and let Your Honor rule.

18 And I'm sorry, I was actually thinking about the --
19 what we're trying to work out, this last issue. I take it Mr.
20 Felger did -- did say, subject to having all these issues
21 worked out, we are prepared to submit a final order that has
22 been agreed upon. Counsel and I -- the few remaining items
23 that were unresolved as of this morning, have been resolved,
24 so I don't think that that part of it will be an impediment.
25 And we are prepared, again subject to working these issues

1 out, to stay in as the DIP financer.

2 THE COURT: Thank you.

3 MR. PATTERSON: Thank you, Your Honor.

4 MR. FORTE: Your Honor, Earl Forte for Arcus. Mr.
5 Shapiro is currently talking to CIT in the vestibule. The
6 only point I wanted to make was at this stage right now, the
7 releases that we are giving to CIT do not include -- they come
8 up through now.

9 They will not include anything under the March 18th,
10 2008, commitment letter. Parties' rights are preserved to
11 that, and we're not intending to release CIT from any
12 obligations under that. I just wanted to make that point for
13 the record, and we'll see what Mr. Shapiro says when he's
14 done. Thank you.

15 MR. PATTERSON: Your Honor, and for the record, I
16 think counsel has just highlighted what is the issue
17 obviously. We are satisfied with the release between and
18 among the parties. Our view is it does include the exit
19 commitment that is attached to the plan supplement that was
20 filed. That is the issue that we're discussing.

21 THE COURT: Well, hopefully, you can resolve it, or
22 I'll have to get involved with that, and we'll see where that
23 leaves us when we finish everything else.

24 MR. SIROTA: Judge, we're not quite sure what that
25 means, but the Committee's reserving its rights to the extent

1 that it in any event involves or implicates the sale process.

2 MR. BUECHLER: Your Honor, on a separate issue, I'd
3 like to raise it now on behalf of Sun Capital --

4 THE COURT: Would you come up to the microphone.

5 COURTROOM DEPUTY: And please make your appearance,
6 please. Thank you.

7 MR. BUECHLER: Bruce Buechler from Lowenstein
8 Sandler on behalf of Sun Capital Partners. We represent a
9 potential bidder who has expressed an interest both prior to
10 the petition date and since the Chapter 11 petitions were
11 filed with an interest in bidding, and to date, we have not
12 been presented with a confidentiality agreement despite asking
13 or access.

14 And I don't know if you want to try and deal,
15 because the issue we're told is that we'll get a
16 confidentiality agreement soon. We'll get access to the
17 financial data which is great. The other aspect that we need
18 is the ability to get access to a site visit at the Delair
19 plant facility which the debtor has said no to.

20 And we may not resolve that issue tonight, but we
21 want the Court to be aware that Sun Capital is committed that
22 if we get our due diligence, the financial and other data
23 we've asked for, which the debtor knows what it is, and access
24 to the facility, within seven days we can respond to them and
25 tell them whether we are going to move forward with an offer

1 and what the terms are as a competing bidder or not.

2 The debtor has to date said no to that access, and
3 if we can resolve that this evening with Your Court's -- with
4 Your Honor's assistance, great. If you want to put that off
5 for another date until they get us the confidentiality
6 agreement, but we'd like to move forward sooner than later and
7 feel that we've been stymied in even getting the proposed
8 confidentiality agreement.

9 THE COURT: Well, I would say that I do recognize
10 that a lot of things have been going on, but that should be
11 resolved. Your issue should be resolved now based on what --
12 everything else being resolved. Mr. Halperin.

13 MR. HALPERIN: Yes, Your Honor. As the Court is
14 aware, that was a concern for the Committee and something that
15 we had been addressing. And that will be resolved we believe
16 through the process. There is now going to be a sale
17 facilitator, whatever title we're going to call this person,
18 that is going to run that process to make sure that
19 appropriate materials, information, et cetera, are given.
20 I've had conversations with Mr. Buechler --

21 THE COURT: And there will be an opportunity for
22 that information to be shared and for them to make an offer if
23 they are interested, correct?

24 MR. HALPERIN: Your Honor, from the Committee's
25 perspective, may the person -- may the person with the largest

1 dumptruck full of cash win.

2 THE COURT: So --

3 MR. HALPERIN: Having said that, we do recognize
4 that it is a running business, that we -- now that everybody
5 is pulling in the same direction, we want to make sure that
6 it's done in a coordinated, organized fashion.

7 I'm grateful for Mr. Buechler's appearance here
8 today. I'm grateful for his client's continued interest. We
9 do want to work with them. We said it before; we'll say it
10 now. There will be a confidentiality agreement forthcoming.
11 There are materials that HIG got. The agreement now is that
12 those can be started to be disseminated to others. There are
13 going to be other issues, other requests. These are the kinds
14 of things we want the sale facilitator in to make sure that we
15 have a third party addressing that, coordinating it, dealing
16 with it and calling balls and strikes.

17 And the answer is yes, it will be dealt with, but I
18 don't think it has to be here today, because I think we don't
19 want to tie that person's hands until we have them in and we
20 know it. But we certainly want them in and we want them to
21 participate.

22 THE COURT: And what's been represented to the
23 Court, Mr. Buechler, is there's going to be an opportunity
24 which will give your client sufficient -- there will be
25 sufficient opportunity for your client to get the materials,

1 to review and make a determination, make an offer and have
2 that be considered.

3 MR. BUECHLER: And the point that I just want to
4 drive home is it's not just access to the financial
5 information and data. I've spoken to the client today. What
6 they also want is the site visit which the debtor has so far
7 said no to. We can deal with the sale facilitator with that
8 hopefully next week. I just want to alert Your Honor to the
9 fact that that may be an issue, and if so, we'll be back if we
10 want to participate fully in the sale process.

11 THE COURT: I don't really think it's going to end
12 up being -- to me, everything gets resolved here that's been
13 represented. I wouldn't think that it'll be a problem, giving
14 you the access that you need.

15 MR. BUECHLER: Thank you.

16 THE COURT: Because everybody seems to be in that
17 same general direction.

18 MR. BUECHLER: Thank you, Judge.

19 THE COURT: Mr. Felger.

20 MR. FELGER: I would just add that the debtors have
21 very serious concerns about the site visit, given they are a
22 true competitor with the same customer -- customer base. So
23 it's a very sensitive, very delicate issue for the debtors.
24 And I think it's -- it's crucial that we allow the sales
25 consultant to come in, understand this, who's been through

1 this before, and can put the right restrictions and parameters
2 on that sort of access.

3 THE COURT: And that's -- but my understanding of
4 the -- of the big picture is that there's going to be an
5 opportunity for interested parties. So that if Mr. Buechler
6 can just be a little patient, that should be something that
7 will be able to be resolved.

8 MR. SHAPIRO: Absolutely. The Committee wants
9 people participating. We just want to make sure that we do it
10 right and that, since we've all agreed to this party, and it's
11 someone that everybody is going to be consenting into in terms
12 of HIG, the debtor, the Committee, that it's someone that
13 we're all going to be comfortable with, someone that
14 everybody's comfortable with, the responsible party, and we
15 just want to make sure that that's the person that's directing
16 the --

17 THE COURT: Okay.

18 MR. HAUSMAN: Your Honor, Mitchell Hausman from the
19 U.S. Trustee's Office, and I'm just trying to understand the
20 timing of when the order will be submitted and entered. As
21 you know, tomorrow's the Bench/Bar Conference. I would like
22 the opportunity to see the order with other people from my
23 office, and -- I heard someone say they had visions of the
24 order being entered tomorrow. I just wanted to know if that
25 was --

1 THE COURT: Well, I was going to get into that
2 because I will be at the Bench/Bar Conference, but I'll
3 probably be back in the later afternoon. I don't know what
4 the -- whether there's a need for it to be entered tomorrow or
5 it can be entered on Monday and made effective as of Friday.
6 I don't know if that's -- how that works with the parties. If
7 it's necessary, I'll make sure that I see it tomorrow and see
8 if there's issues that -- that are involved. Mr. Felger.

9 MR. FELGER: Yeah. We have some concerns regarding
10 the need to access the term facility tomorrow versus Monday,
11 and we'd certainly -- we're certainly going to endeavor and
12 work as hard as we can get to get that done by tomorrow so we
13 don't have any -- any concerns with respect to operations.

14 THE COURT: If you get it here tomorrow, I will, you
15 know, try to come back in or get a copy so I can look at it.
16 I mean, generally, the orders that I'm anticipating, it's not
17 going to be something that I can look at on a Blackberry. I
18 mean, I'm really going to have to go through and check the
19 entire order. So I need time to do that myself. That's all
20 I'm saying.

21 MR. BRODY: Your Honor, our goal is to get a draft
22 out to everybody as early tonight as possible. I say that --
23 the word early -- with great caveats, to regulate --

24 THE COURT: Right, in context --

25 MR. BRODY: -- so that everybody can get their

1 comments in by either late tonight or the first thing tomorrow
2 morning. So at least it's at chambers, and I know there are a
3 lot of people who would like to get the document after
4 everybody's received comments as early as possible. That's
5 what we're endeavoring to do.

6 COURTROOM DEPUTY: May I have your appearance,
7 please?

8 MR. BRODY: Alan Brody, Greenberg, Traurig.

9 MR. SIROTA: Judge, I think -- I think the objective
10 would be to get to you tomorrow sometime a final order, but
11 perhaps what makes the most sense is that we get a bridge
12 order that carries the company until Monday, so that there's
13 no shortage of financing while Your Honor can digest the order
14 and the parties can submit --

15 THE COURT: Is that -- does that work for everybody
16 else? I thought that was --

17 MR. FORTE: Your Honor --

18 THE COURT: -- yes?

19 MR. FORTE: If counsel's thoughts --

20 THE COURT: Can you just come up to the microphone,
21 please.

22 MR. FORTE: Excuse me. I'm sorry, I apologize, Your
23 Honor. Earl Forte. If they're talking our DIP funding till
24 Monday, we haven't agreed to do that.

25 MR. SIROTA: Well, then, we -- we probably don't

1 understand what cooperation means, because I thought that the
2 higher exercise was to facilitate --

3 THE COURT: I did think -- no, but I did think that
4 there was going to be a one-to-two-day financing --

5 MR. SIROTA: Right.

6 THE COURT: -- interim -- I thought that's what was
7 said downstairs, just to carry things until everything got
8 finalized and taken out completely. Is it --

9 MR. FORTE: Your Honor, may I -- may I speak to Mr.
10 Shapiro, my partner, for a moment?

11 THE COURT: Sure.

12 MR. FORTE: Thank you. I apologize.

13 THE COURT: Should we take a little break? Okay.

14 MS. MITCHELL: Your Honor, Nancy Mitchell on behalf
15 of Arch Acquisition, HIG Portfolio Company. I could actually
16 confirm on the record, which I believe Mr. Felger wanted me to
17 do, that HIG does -- is prepared to fund the \$25 million --

18 THE COURT: Well, why don't we do that.

19 MS. MITCHELL: -- the \$25 million DIP facility, you
20 know, 25 under the -- under the order because we have to do a
21 negative notice on the 30. We're prepared to fund our DIP
22 facility and we have funds available to do that. As soon as
23 the order is entered, the documents are final, and the
24 conditions which are very limited in our document are met,
25 we're prepared to fund.

1 We also have provided the debtor with a commitment
2 letter for the exit financing in the amount of \$90 million,
3 which is available to -- which is available to the debtor and
4 will be available, obviously, subject to the conditions
5 contained therein.

6 I make that representation on the record on behalf
7 of our client. If you would like us to proffer testimony or
8 put Mr. Ozbolt from HIG on the stand, we'd be happy to do
9 that.

10 THE COURT: No, Mr. Felger, you don't want that?

11 MR. FELGER: I expect that it'll be done through a
12 proffer, have Mr. Ozbolt represent that everything that was
13 said by counsel is true and correct. And unless somebody else
14 wanted to cross, we'd be fine with that.

15 MR. MITCHELL: All right. So we'll proffer Mr.
16 Ozbolt. I'm going to let my colleague, Mr. Davis, do that.

17 MR. DAVIS: Thank you, Your Honor.

18 HIG, Arch Acquisitions, would proffer the testimony
19 of Sean Ozbolt. Mr. Ozbolt is here in court with us today.
20 He's up from Miami. He is a principal at HIG. He has --
21 would be prepared to testify that HIG has approved the funding
22 in the contemplated DIP that you have heard about today, that
23 he has a commitment to deliver to the Court that that funding
24 will go forward and that those funds are ready to be wired as
25 soon as tomorrow, assuming that all the appropriate orders are

1 finalized and the documentation is ready to go. And that, as
2 a result, HIG is ready, willing and able to perform its
3 obligations under the agreements before the Court today and
4 the DIP.

5 THE COURT: Anybody have any reason to question the
6 witness or any questions for Mr. Davis?

7 MR. FORTE: Your Honor, Earl Forte for Arcus.
8 Because of the issues we have with CIT, we want to make sure
9 we're on the record preserving our rights to call Mr. Ozbolt
10 to the stand to examine him. That's the only purpose of what
11 I want to say, because we have a shifting situation, we want
12 to reserve our right to examine him and test the bona fides of
13 the commitments he has, particularly from CIT.

14 THE COURT: You want to do that now?

15 (Pause in proceedings.)

16 MR. SHAPIRO: Can we impose upon you for a five-
17 minute break?

18 THE COURT: Just five minutes.

19 MR. SHAPIRO: I mean, you'll come back in five and I
20 won't leave the room.

21 THE COURT: Okay.

22 MR. SHAPIRO: Okay.

23 MR. DAVIS: Your Honor, may I finish my proffer --

24 MR. SHAPIRO: I'm sorry.

25 MR. DAVIS: -- before that happens?

1 THE COURT: All right.

2 MR. DAVIS: Thank you.

3 To finish the proffer of Mr. Ozbolt's testimony, he
4 would also testify, were he to be called to the stand, that
5 HIG has issued a commitment to provide the funding necessary
6 for the exit financing as contemplated under the plan or the
7 draft plan that is before the Court and that will ultimately
8 be, we hope, confirmed and the transaction concluded.

9 Thank you, Your Honor.

10 THE COURT: All right. Anybody else that wants to
11 be heard before we take the five-minute break?

12 All right. Five minutes, we'll be back. Hopefully,
13 we can wrap up these other few things.

14 (Recess, 6:28 p.m. to 6:36 p.m.)

15 THE COURT: Be seated.

16 MR. SHAPIRO: Your Honor, in the spirit of
17 cooperation, we have confirmed with the Committee that the
18 debtors advise us that they may need additional advances,
19 unfortunately, for tomorrow until we can get this order
20 entered on Monday. So we've agreed to advance based on what
21 they're saying under the existing terms and documents and
22 orders not to exceed \$300,000 which is what they told us they
23 will need. And that goes through the end of business on
24 Monday.

25 If we're having a problem and it's not done on

1 Monday, then we may have to do something else, but we're
2 agreeing --

3 THE COURT: I'll be available on Monday, so --

4 MR. SHAPIRO: -- in cooperation -- through then.

5 Okay.

6 THE COURT: -- if there's something that you need
7 the Court for, that's not a problem. I think that -- that
8 resolves I think many of the issues. So that gives --

9 MR. SHAPIRO: Okay.

10 THE COURT: -- all of you a chance to review all of
11 the terms and conditions --

12 MR. SHAPIRO: Correct.

13 THE COURT: -- and finalize everything --

14 MR. SHAPIRO: Now, with respect to the --

15 THE COURT: -- and have it signed and be in effect.

16 MR. SHAPIRO: -- last, hopefully last issue, with
17 CIT, and then counsel can stand up and confirm it, this is
18 what we think we've agreed to.

19 THE COURT: Okay.

20 MR. SHAPIRO: With respect to CIT and the Arcus
21 entities, we are entering into mutual releases today which
22 will include any and all alleged claims or whatever under the
23 letter agreement of March 18th, fully released up through
24 today.

25 With respect to after the closing, the letter is --

1 the letter stays there. They're reserved their rights. We've
2 reserved our rights. Nobody's casting aspersions on anybody.
3 We're hoping it's irrelevant and we never have to see any
4 other Judge about it again, but that gets us through today.

5 THE COURT: Right. But you're reserving your rights
6 to whatever happens thereafter, right?

7 MR. SHAPIRO: Correct.

8 MR. PATTERSON: Your Honor --

9 THE COURT: Mr. Patterson.

10 MR. PATTERSON: -- that's correct. And, again, I --
11 we'll look at the language of the release. I don't know, is
12 the release going to talk just about the letter or the whole
13 Arcus involvement, Versa involvement? I thought that's what
14 was contemplated --

15 MR. SHAPIRO: No, no. Any --

16 MR. PATTERSON: Anything.

17 MR. SHAPIRO: -- anything in this transaction.

18 We're not trying to be cute. Anything --

19 MR. PATTERSON: No, no, I know you're not.

20 MR. SHAPIRO: -- anything in this transaction
21 relating to what we've done up to the date, have a clean
22 slate. Everybody's fine.

23 MR. PATTERSON: Yeah. And we obviously reserve all
24 of our rights as does counsel's client.

25 MR. SHAPIRO: Okay.

1 MR. PATTERSON: The one thing I did forget to -- I'm
2 sorry. Are you done?

3 MR. SHAPIRO: Yes.

4 MR. PATTERSON: Okay.

5 MR. SHAPIRO: Thank you.

6 MR. PATTERSON: You're welcome. The one thing I did
7 forget to address, Your Honor, in light of what just happened,
8 our interim financing order, I think number three, expires
9 today. It sounds like we're bridging through Monday if I'm
10 hearing counsel correctly. Would Your Honor like another
11 bridge order? Would you do something -- so ordered from the
12 record, so that you don't have to be bothered?

13 THE COURT: I'm willing to so order from the record
14 if everybody is okay with that. It's been represented what
15 the advances will be, that the maximum is \$300,000, that it
16 only takes you through, let's say, the end of business on
17 Monday, correct?

18 MR. SHAPIRO: On Monday, correct.

19 MR. PATTERSON: Right.

20 THE COURT: Which -- let's just put a time on it,
21 5:00 p.m. on Monday?

22 MR. SHAPIRO: Okay.

23 THE COURT: And absent everything being resolved,
24 which I hope it will be, you can contact me on Monday, and we
25 can have a conference if we need to, or you can renegotiate or

1 whatever you need to do, but I'll look to be getting the order
2 hopefully on Monday which will finalize it and you won't need
3 anything beyond that time. That's the way I look at it.

4 MR. PATTERSON: Okay. So we are so ordered in terms
5 of a further interim extension through Monday.

6 THE COURT: And I order that that interim extension
7 will extend under the same terms as it was for both CIT and
8 Arcus through 5:00 p.m. on Monday.

9 MR. HALPERIN: Just that -- yes, sorry, Your Honor
10 -- Alan Halperin on behalf of the Committee. I think -- well,
11 obviously, to the extent Your Honor needs to take until Monday
12 and the parties need to get it done, the game plan is to get
13 an order to you by tomorrow because the longer this sits out,
14 the more things will start to drift.

15 THE COURT: That's fine. If the order is here, I
16 might get a chance to even look at it tomorrow afternoon. But
17 I'm not anticipating that you will have it here before the
18 afternoon.

19 MR. HALPERIN: That's -- I would agree with that.

20 MR. SHAPIRO: I guess, Your Honor --

21 THE COURT: So if it's here, I will look at it
22 either Friday later or over the weekend, and I expect that by
23 Monday, it should be finalized. If there's issues that come
24 up, you can call my chambers. We'll try to do what we have to
25 do to either talk about it on -- tomorrow or Monday.

1 MR. FELGER: Can we reserve time with Your Honor on
2 Tuesday in case we need to come running back for some
3 assistance?

4 THE COURT: Well, if you get past Monday, I don't
5 know that you're going to -- how about if I -- how about if we
6 set up a telephone conference for Monday afternoon if you need
7 it.

8 MR. SHAPIRO: Okay. Right. Why don't we do a
9 telephone conference then, say if we'll need it --

10 MR. FELGER: Right.

11 MR. SHAPIRO: -- otherwise, we'll be happy -- and
12 maybe she'll have the order.

13 THE COURT: Right. If I have the order by then --
14 then we won't need it. What's -- what do we have on Monday
15 afternoon, Mary?

16 (Pause in proceedings.)

17 THE COURT: All right. I have a telephone
18 conference at 2:00 which I don't think will take that long.
19 How about if we say 3:00 on Monday?

20 MR. FELGER: Terrific.

21 MR. SHAPIRO: Okay.

22 THE COURT: It'll be reserved, Mr. Felger, I'll make
23 you responsible to set it up if it becomes necessary to have
24 it. If I have the order, then --

25 MR. FELGER: Okay.

1 THE COURT: -- then you won't need it, and if I have
2 a problem, we've got that time set aside if we need to have a
3 conference with regard to any of the terms that are in there
4 or if there's any questions.

5 MR. FELGER: Thank you, Your Honor.

6 THE COURT: All right. Just one more thing, I have
7 a whole slew of orders shortening time from a variety of
8 people. What do you want me to do with that in light of
9 what's happened?

10 MR. HALPERIN: Once the order gets entered, I
11 believe that's going to be resolving those issues. I think
12 everything's been scheduled for May 9th. We'd ask you to
13 leave that for now.

14 THE COURT: Well, it hasn't been schedule yet. I
15 haven't signed the orders yet.

16 MR. HALPERIN: Oh, I'm sorry.

17 THE COURT: But I could sign them and schedule them
18 for the 9th or I could just hold off until Monday?

19 MR. HALPERIN: Hold off until Monday and hopefully
20 the order will be entered and all these issues will become
21 moot.

22 THE COURT: Okay. And then anything that's left, we
23 can always deal with that.

24 MR. BRODY: Your Honor, this would also include HIG
25 and Arch Acquisition's motion to terminate exclusivity which

1 Your Honor already signed, and that's on for May 9th.

2 THE COURT: That's already -- I think already on the
3 May 9th. I'm not doing anything with that, but I was going to
4 -- I was holding these others to see what everybody wanted to
5 do with them once we saw what was happening today. So I'm
6 just going to wait till Monday. It may not be necessary to
7 enter those other ones --

8 MR. BRODY: Or to go forward on them.

9 THE COURT: -- and your matter may be resolved, too.
10 But for today's purposes, I'm just going to wait on the OSTs.

11 MR. BRODY: Thank you.

12 THE COURT: Anything else that anybody else needs to
13 put on the record or bring up to the Court?

14 MR. FELGER: I think that's all we have, Your Honor.

15 THE COURT: All right. I want to thank everybody
16 for the time that was spent today which I know was
17 considerable, and I -- and although I wasn't part of what
18 happened before that, I do recognize that -- that was the --
19 today was the culmination of many, many hours for everybody
20 over the days that preceded today. And I -- I think, in my
21 estimation, that's how this process works with good lawyers
22 talking to each other and resolving issues and getting matters
23 resolved, and so I thank you all for that service that you
24 performed that led to --

25 MR. SHAPIRO: Thank you.

1 MR. FELGER: And sometimes yelling at each other.

2 THE COURT: And that, too.

3 MR. SIROTA: But no hitting.

4 THE COURT: -- which led us to being able to
5 hopefully get a final resolved in this matter.

6 MR. FELGER: Thank you, Your Honor.

7 MR. SHAPIRO: Thank you.

8 MR. PATTERSON: Thank you, Your Honor.

9 (Proceedings concluded at 6:44 p.m.)

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C E R T I F I C A T I O N

I, Lois A. Vitarelli, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

12 LOTS A. VITABELLI

13 DIANA DOMAN TRANSCRIBING

May 14, 2008